

HOUSE TAXATION AND REVENUE COMMITTEE SUBSTITUTE FOR
HOUSE BILL 3

49TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SPECIAL SESSION, 2010

AN ACT

RELATING TO TAXATION; TEMPORARILY INCREASING THE CIGARETTE TAX
BY SEVENTY-FIVE CENTS (\$.75) PER PACK; PROVIDING FOR A TRIBAL
TAX-CREDIT STAMP FOR TRIBES THAT IMPOSE A TRIBAL CIGARETTE TAX;
ADJUSTING THE DISTRIBUTIONS OF THE CIGARETTE TAX AND DISCOUNTS
FOR TAX STAMPS; AMENDING EXEMPTIONS FROM THE CIGARETTE TAX;
DISTRIBUTING ADDITIONAL REVENUE ATTRIBUTABLE TO THE INCREASE IN
THE CIGARETTE TAX TO THE GENERAL FUND.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 7-1-6.11 NMSA 1978 (being Laws 1983,
Chapter 211, Section 16, as amended) is amended to read:

"7-1-6.11. DISTRIBUTIONS OF CIGARETTE TAXES.--

A. A distribution pursuant to Section 7-1-6.1 NMSA
1978 shall be made to the county and municipality recreational
fund in an amount equal to ~~[one and thirty-five]~~ eighty-three

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1 hundredths percent of the net receipts, exclusive of penalties
2 and interest, attributable to the cigarette tax.

3 B. A distribution pursuant to Section 7-1-6.1 NMSA
4 1978 shall be made to the county and municipal cigarette tax
5 fund in an amount equal to [~~two and sixty-nine~~] one and sixty-
6 six hundredths percent of the net receipts, exclusive of
7 penalties and interest, attributable to the cigarette tax.

8 C. A distribution pursuant to Section 7-1-6.1 NMSA
9 1978 shall be made to the cancer research and treatment center
10 at the university of New Mexico health sciences center in an
11 amount equal to [~~one and thirty-five~~] eighty-three hundredths
12 percent of the net receipts, exclusive of penalties and
13 interest, attributable to the cigarette tax.

14 D. A distribution pursuant to Section 7-1-6.1 NMSA
15 1978 shall be made to the New Mexico finance authority in an
16 amount equal to [~~two and two~~] one and twenty-five hundredths
17 percent of the net receipts, exclusive of penalties and
18 interest, attributable to the cigarette tax.

19 E. A distribution pursuant to Section 7-1-6.1 NMSA
20 1978 in an amount equal to [~~fourteen and thirty-seven~~] eight
21 and eighty-nine hundredths percent of the net receipts,
22 exclusive of penalties and interest, attributable to the
23 cigarette tax, shall be made, on behalf of and for the benefit
24 of the university of New Mexico health sciences center, to the
25 New Mexico finance authority.

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underscoring material = new
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1 F. A distribution pursuant to Section 7-1-6.1 NMSA
 2 1978 in an amount equal to [~~six and five~~] three and seventy-
 3 four hundredths percent of the net receipts, exclusive of
 4 penalties and interest, attributable to the cigarette tax shall
 5 be made to the New Mexico finance authority for land
 6 acquisition and the planning, designing, construction and
 7 equipping of department of health facilities or improvements to
 8 such facilities.

9 G. A distribution pursuant to Section 7-1-6.1 NMSA
 10 1978 in an amount equal to [~~fifteen and seventy-nine~~] nine and
 11 seventy-seven hundredths percent of the net receipts, exclusive
 12 of penalties and interest, attributable to the cigarette tax
 13 shall be made to the New Mexico finance authority for deposit
 14 in the credit enhancement account created in the authority.

15 H. A distribution pursuant to Section 7-1-6.1 NMSA
 16 1978 in an amount equal to [~~one~~] sixty-two hundredths percent
 17 of the net receipts, exclusive of penalties and interest,
 18 attributable to the cigarette tax shall be made, on behalf of
 19 and for the benefit of the rural county cancer treatment fund,
 20 to the New Mexico finance authority."

21 Section 2. Section 7-12-2 NMSA 1978 (being Laws 1971,
 22 Chapter 77, Section 2, as amended) is amended to read:

23 "7-12-2. DEFINITIONS.--As used in the Cigarette Tax Act:

24 A. "cigarette" means:

25 (1) any roll of tobacco or any substitute for

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1 tobacco wrapped in paper or in any substance not containing
2 tobacco;

3 (2) any roll of tobacco that is wrapped in any
4 substance containing tobacco, other than one hundred percent
5 natural leaf tobacco, which, because of its appearance, the
6 type of tobacco used in the filler, its packaging and labeling,
7 or its marketing and advertising, is likely to be offered to,
8 or purchased by, consumers as a cigarette, as described in
9 Paragraph (1) of this subsection;

10 (3) bidis and kreteks; or

11 (4) any other roll of tobacco that is defined
12 as a "cigarette" in Subsection D of Section 6-4-12 NMSA 1978;

13 B. "close of business" means that time when a
14 business ceases to operate for the remainder of the day or
15 12:00 a.m., if the business is open and conducting business at
16 12:00 a.m.;

17 ~~[B.]~~ C. "contraband cigarettes" means cigarette
18 packages with counterfeit stamps, counterfeit cigarettes,
19 cigarettes that have false or fraudulent manufacturing labels,
20 cigarettes not sold in packages of five, ten, twenty or twenty-
21 five, cigarette packages without the tax, tax-credit or tax-
22 exempt stamps required by the Cigarette Tax Act and cigarettes
23 produced by a manufacturer or in a brand family not included in
24 the directory;

25 ~~[C.]~~ D. "department" means the taxation and revenue

1 department, the secretary of taxation and revenue or any
2 employee of the department exercising authority lawfully
3 delegated to that employee;

4 ~~[D.]~~ E. "directory" means a listing of tobacco
5 product manufacturers and brand families that is developed,
6 maintained and published by the attorney general under the
7 Tobacco Escrow Fund Act;

8 ~~[E.]~~ F. "distributor" means a person licensed
9 pursuant to the Cigarette Tax Act to sell or distribute
10 cigarettes in New Mexico. "Distributor" does not include:

11 (1) a retailer;

12 (2) a cigarette manufacturer, export warehouse
13 proprietor or importer with a valid permit pursuant to 26
14 U.S.C. 5713, if that person sells cigarettes in New Mexico only
15 to distributors that hold valid licenses under the laws of a
16 state or sells to an export warehouse proprietor or to another
17 manufacturer; or

18 (3) a common or contract carrier transporting
19 cigarettes pursuant to a bill of lading or freight bill, or a
20 person who ships cigarettes through the state by a common or
21 contract carrier pursuant to a bill of lading or freight bill;

22 ~~[F.]~~ G. "license" means a license granted pursuant
23 to the Cigarette Tax Act that authorizes the holder to conduct
24 business as a manufacturer or distributor of cigarettes;

25 ~~[G.]~~ H. "manufacturer" means a person that

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1 manufactures, fabricates, assembles, processes or labels a
2 cigarette or that imports from outside the United States,
3 directly or indirectly, a finished cigarette for sale or
4 distribution in the United States;

5 ~~[H.]~~ I. "master settlement agreement" means the
6 settlement agreement and related documents entered into on
7 November 23, 1998 by the state and leading United States
8 tobacco product manufacturers;

9 ~~[F.]~~ J. "package" means an individual pack, box or
10 other container; "package" does not include a container that
11 itself contains other containers, such as a carton of
12 cigarettes;

13 K. "qualifying tribal cigarette tax" means an
14 excise, privilege or similar tax at a minimum rate of:

15 (1) three and seventy-five hundredths cents
16 (\$.0375) per cigarette if the cigarettes are packaged in lots
17 of twenty or twenty-five;

18 (2) seven and one-half cents (\$.075) per
19 cigarette if the cigarettes are packaged in lots of ten; or

20 (3) fifteen cents (\$.15) per cigarette if the
21 cigarettes are packaged in lots of five;

22 ~~[J.]~~ L. "retailer" means a person, whether located
23 within or outside of New Mexico, that sells cigarettes at
24 retail to a consumer in New Mexico and the sale is not for
25 resale;

1 ~~[K-]~~ M. "stamp" means an adhesive label issued and
2 authorized by the department to be affixed to cigarette
3 packages for excise tax purposes and upon which is printed a
4 serial number and the words "State of New Mexico" and "tobacco
5 tax";

6 ~~[L-]~~ N. "tax stamp" means a stamp that has a
7 specific cigarette tax value pursuant to the Cigarette Tax Act;
8 ~~[and]~~

9 O. "tax-credit stamp" means a stamp that indicates
10 the cigarette package bearing the stamp is to be or has been
11 sold by a retailer located on land of a tribe that has imposed
12 a qualifying tribal cigarette tax;

13 ~~[N-]~~ P. "tax-exempt stamp" means a stamp that
14 indicates a tax-exempt status pursuant to the Cigarette Tax
15 Act;

16 Q. "tribal member" means a person who is recognized
17 by the governing body of an Indian tribe to be an enrolled
18 member of that Indian tribe;

19 R. "tribe" means a federally recognized Indian
20 nation, tribe or pueblo located wholly or partially in New
21 Mexico, including:

22 (1) a political subdivision, agency or
23 department of a tribe;

24 (2) an incorporated or unincorporated
25 enterprise of a tribe, one or more tribes or a political

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1 subdivision of a tribe; or

2 (3) a corporation considered to be an Indian
3 or a tribe by the federal government or the state; and

4 S. "tribe's land" means the reservation, pueblo
5 grant or trust land of a tribe and property held by the United
6 States in trust jointly for the nineteen New Mexico Indian
7 pueblos pursuant to Public Law 95-232."

8 Section 3. Section 7-12-3 NMSA 1978 (being Laws 1971,
9 Chapter 77, Section 3, as amended) is amended to read:

10 "7-12-3. EXCISE TAX ON CIGARETTES--RATES.--

11 A. For the privilege of selling, giving or
12 consuming cigarettes in New Mexico, there is levied an excise
13 tax at the following rates for each cigarette sold, given or
14 consumed in this state:

15 (1) [~~four and fifty-five hundredths cents~~
16 ~~(\$.0455)] eight and three-tenths cents (\$0.083) if the
17 cigarettes are packaged in lots of twenty or twenty-five;~~

18 (2) [~~nine and ten-hundredths cents (\$0.091)]
19 sixteen and six-tenths cents (\$0.166) if the cigarettes are
20 packaged in lots of ten; or~~

21 (3) [~~eighteen and twenty-hundredths cents~~
22 ~~(\$0.182)] thirty-three and two-tenths cents (\$0.332) if the
23 cigarettes are packaged in lots of five.~~

24 B. The tax imposed by this section shall be
25 referred to as the "cigarette tax".

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1 Section 4. Section 7-12-3.1 NMSA 1978 (being Laws 1986,
2 Chapter 13, Section 3, as amended) is amended to read:

3 "7-12-3.1. CIGARETTE INVENTORY TAX--IMPOSITION OF TAX--
4 DATE PAYMENT OF TAX DUE.--

5 A. A tax that may be identified as the "cigarette
6 inventory tax" is imposed on a distributor that has in its
7 possession tax-exempt stamps, tax-credit stamps or tax stamps,
8 whether or not affixed to packages of cigarettes, ~~[on]~~ at the
9 close of business on the day prior to the date on which an
10 increase in the cigarette tax imposed by Section 7-12-3 NMSA
11 1978 is effective.

12 B. The cigarette inventory tax due from the
13 distributor is calculated by multiplying the number of tax
14 stamps in the distributor's possession by the increase in the
15 excise tax. Tax-exempt stamps and tax-credit stamps are not
16 included in the calculation to determine the amount of
17 cigarette inventory tax to be paid by a distributor.

18 C. The cigarette inventory tax is to be paid to the
19 department on or before the twenty-fifth day of the month
20 following the month in which the increase in the cigarette tax
21 is effective."

22 Section 5. Section 7-12-3.2 NMSA 1978 (being Laws 1986,
23 Chapter 13, Section 4, as amended) is amended to read:

24 "7-12-3.2. CIGARETTE INVENTORIES.--

25 A. ~~[On]~~ At the close of business on the day prior

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1 to any date on which the cigarette tax imposed by Section
2 7-12-3 NMSA 1978 is increased, each distributor shall take
3 inventory of tax-exempt stamps, tax-credit stamps and tax
4 stamps on hand, including stamps affixed to packages of
5 cigarettes.

6 B. Each distributor shall report the total number
7 of tax-exempt stamps, tax-credit stamps and tax stamps in
8 inventory ~~[on]~~ at the close of business on the day prior to the
9 date on which the cigarette tax increases and pay the cigarette
10 inventory tax due."

11 Section 6. Section 7-12-4 NMSA 1978 (being Laws 1971,
12 Chapter 77, Section 4, as amended) is amended to read:

13 "7-12-4. EXEMPTION.--

14 A. Exempted from the cigarette tax are sales of
15 cigarettes:

16 (1) to the United States or any agency or
17 instrumentality thereof or the state of New Mexico or any
18 political subdivision thereof;

19 (2) to ~~[the governing body]~~ a tribe, or to
20 ~~[any enrolled]~~ a tribal member licensed by the governing body
21 of ~~[any Indian nation]~~ a tribe ~~[or pueblo]~~ for use or sale on
22 that ~~[reservation or pueblo grant]~~ tribe's land, if the tribe
23 has in place a qualifying tribal cigarette tax; and

24 (3) sales ~~[which]~~ that the state is prohibited
25 from taxing by a provision of the United States constitution or

1 the constitution of the state of New Mexico.

2 B. As used in this section, the term "agency or
3 instrumentality" does not include persons who are agents or
4 instrumentalities of the United States for a particular purpose
5 or only when acting in a particular capacity or corporate
6 agencies or instrumentalities."

7 Section 7. A new section of the Cigarette Tax Act is
8 enacted to read:

9 "[NEW MATERIAL] CIGARETTE TAX--TRIBAL SALES--TAX-CREDIT
10 STAMPS.--

11 A. A distributor shall obtain from the department
12 tax-credit stamps to affix to packages of cigarettes sold to a
13 tribe or a tribal member licensed or otherwise approved by a
14 tribe to sell cigarettes under the authority of the tribe on
15 that tribe's land; provided that the tribe has certified to the
16 department that the tribe has in effect a qualifying tribal
17 cigarette tax.

18 B. Cigarettes sold by a tribe or tribal member
19 bearing a tax-credit stamp shall be sold for use or sale on
20 that tribe's land or on the land of another tribe or for use
21 but not for resale in the state at a location off any tribe's
22 land."

23 Section 8. Section 7-12-5 NMSA 1978 (being Laws 1971,
24 Chapter 77, Section 5, as amended) is amended to read:

25 "7-12-5. AFFIXING STAMPS.--

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1 A. Except as provided in Section 7-12-6 NMSA 1978,
2 all cigarettes shall be placed in packages or containers to
3 which a stamp shall be affixed. Only a distributor with a
4 valid license issued pursuant to the Cigarette Tax Act may
5 purchase or obtain unaffixed tax-exempt stamps, tax-credit
6 stamps or tax stamps. A distributor shall not sell or provide
7 unaffixed stamps to another distributor, manufacturer, export
8 warehouse proprietor or importer with a valid permit pursuant
9 to 26 U.S.C. 5713 or any other person.

10 B. Stamps shall be affixed by the distributor to
11 each package of cigarettes to be sold or distributed in New
12 Mexico within thirty days of receipt of those packages.

13 C. A distributor shall apply stamps only to
14 packages of cigarettes that the distributor has received
15 directly from another distributor or from a manufacturer or
16 importer of cigarettes that possesses a valid and current
17 permit pursuant to 26 U.S.C. 5713.

18 D. A distributor shall not affix a stamp to a
19 package of cigarettes of a manufacturer or a brand family that
20 is not included in the directory or sell, offer or possess for
21 sale cigarettes of a manufacturer or brand family that is not
22 included in the directory.

23 E. Packages shall contain cigarettes in lots of
24 five, ten, twenty or twenty-five.

25 F. Unless the requirements of this section are

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1 waived pursuant to Section 7-12-6 NMSA 1978, a tax stamp shall
 2 be affixed to each package of cigarettes subject to the
 3 cigarette tax, a tax-credit stamp shall be affixed to each
 4 package of cigarettes subject to a qualifying tribal cigarette
 5 tax, and a tax-exempt stamp shall be affixed to each package of
 6 cigarettes not subject to the cigarette tax pursuant to Section
 7 7-12-4 NMSA 1978.

8 G. A tax-exempt stamp or tax-credit stamp is not an
 9 excise tax stamp for purposes of determining units sold
 10 pursuant to Section 6-4-12 NMSA 1978.

11 H. Stamps shall be affixed inside the boundaries of
 12 New Mexico, unless the department has granted a license
 13 allowing a person to affix stamps outside New Mexico."

14 Section 9. Section 7-12-7 NMSA 1978 (being Laws 1971,
 15 Chapter 77, Section 7, as amended by Laws 2006, Chapter 89,
 16 Section 3 and by Laws 2006, Chapter 91, Section 6) is amended
 17 to read:

18 "7-12-7. SALE OF STAMPS--PRICES.--

19 A. Only the department shall sell stamps. Stamps
 20 may be sold by the department only to a distributor.

21 B. Stamps shall display a serial number. Stamps
 22 bearing the same serial number shall not be sold to more than
 23 one distributor. The department shall keep records of the
 24 serial numbers of the stamps provided to each distributor.

25 C. A stamp shall be affixed to a package of

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1 cigarettes in such a manner as to clearly display the serial
2 number at the point of sale.

3 D. Tax stamps shall be sold at their face value
4 with the following discounts:

5 (1) [~~one~~] fifty-five hundredths percent less
6 than the face value of the first thirty thousand dollars
7 (\$30,000) of stamps purchased in one calendar month;

8 (2) [~~eight-tenths~~] forty-four hundredths
9 percent less than the face value of the second thirty thousand
10 dollars (\$30,000) of stamps purchased in one calendar month;
11 and

12 (3) [~~one-half~~] twenty-seven hundredths percent
13 less than the face value of stamps purchased in excess of sixty
14 thousand dollars (\$60,000) in one calendar month.

15 E. Tax-credit stamps shall be provided only to
16 distributors and shall be provided free of charge; provided
17 that the distributor is in full compliance with the reporting
18 requirements of the Cigarette Tax Act and rules adopted
19 pursuant to that act.

20 [~~E.~~] F. If the face value of tax stamps sold in a
21 single sale is less than one thousand dollars (\$1,000), the
22 discount provided for in this section shall not be allowed.

23 [~~F.~~] G. Payment for tax stamps shall be made on or
24 before the twenty-fifth day of the month following the month in
25 which the sale of stamps by the department is made.

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1 [~~G-~~] H. Tax-exempt stamps shall be provided only to
2 distributors and shall be free of charge; provided that the
3 distributor is in full compliance with the reporting
4 requirements of the Cigarette Tax Act and rules adopted
5 pursuant to that act."

6 Section 10. Section 7-12-9.2 NMSA 1978 (being Laws 2006,
7 Chapter 91, Section 8, as amended) is amended to read:

8 "7-12-9.2. DISTRIBUTOR'S LICENSE.--

9 A. A person shall not distribute stamped packages
10 of cigarettes for resale or sell stamped packages of cigarettes
11 at wholesale without first obtaining a distributor's license
12 from the department.

13 B. A person licensed to distribute cigarettes is
14 authorized to:

15 (1) receive unstamped packages of cigarettes
16 from a manufacturer or a distributor;

17 (2) purchase tax stamps and receive
18 tax-exempt stamps and tax-credit stamps from the department;

19 (3) affix tax stamps, tax-credit stamps or
20 tax-exempt stamps to unstamped packages of cigarettes;

21 (4) sell stamped packages of cigarettes to a
22 retailer for resale or to a distributor; and

23 (5) sell unstamped packages of cigarettes to a
24 person licensed to distribute cigarettes outside of New Mexico
25 or to a distributor."

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1 Section 11. Section 7-12-17 NMSA 1978 (being Laws 1971,
2 Chapter 77, Section 14, as amended) is amended to read:

3 "7-12-17. REPORTING REQUIREMENTS--PENALTY.--

4 A. Each person who sells in New Mexico cigarettes
5 manufactured by that person or who receives on consignment or
6 buys cigarettes either directly from the manufacturer or from
7 any out-of-state person for resale in New Mexico shall report
8 to the department by the twenty-fifth day of each month that
9 person's sales of cigarettes during the preceding month in each
10 municipality and within that portion of each county outside of
11 the municipalities located in that county. The department
12 shall then advise the state treasurer of the proportion of the
13 total sales of cigarettes for the month within each
14 municipality and within that portion of each county outside of
15 municipalities, including sales of cigarettes to tribes or
16 tribal members in a county or municipality. The reports of
17 such persons shall, upon receipt by the department, become
18 public records.

19 B. Any person who sells in New Mexico cigarettes
20 manufactured by that person or who receives on consignment or
21 buys cigarettes for resale in New Mexico who willfully fails to
22 render accurately the reports required by this section and any
23 municipal or county officer who approves any expenditure or
24 expends funds distributed from the county and municipality
25 recreational fund for any purposes other than permitted by

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1 Section 7-12-15 NMSA 1978 is guilty of a petty misdemeanor.

2 C. Any tobacco product manufacturer, stamping agent
3 or importer of cigarettes, or any officer, employee or agent of
4 any such entity, who knowingly makes a materially false
5 statement in any record required to be kept by the Cigarette
6 Tax Act, or in any report or return required to be filed with
7 the department by the Cigarette Tax Act, is guilty of a fourth
8 degree felony."

9 Section 12. Section 7-12-18 NMSA 1978 (being Laws 2006,
10 Chapter 91, Section 14, as amended) is amended to read:

11 "7-12-18. REPORTS.--

12 A. A distributor shall submit periodic reports to
13 the department, in the manner and on the form prescribed by the
14 department. A distributor shall submit a separate report for
15 each of its facilities. The information in the report shall be
16 itemized and shall clearly disclose cigarette brands,
17 quantities and the type of stamp applied to the packages of
18 cigarettes. A report shall include:

19 (1) an inventory of stamped and unstamped
20 packages of cigarettes held for sale or distribution within New
21 Mexico at the beginning of the reporting period;

22 (2) the quantity of stamped packages of
23 cigarettes held for sale or distribution within New Mexico that
24 were received from another person during the reporting period
25 and the name and address of each person from whom each quantity

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1 was received;

2 (3) the quantity of New Mexico stamped
3 packages of cigarettes that were distributed or shipped to
4 another distributor or retailer within New Mexico during the
5 reporting period and the name and address of each person to
6 whom each quantity was distributed or shipped;

7 (4) the quantity of unstamped packages of
8 cigarettes that were distributed or shipped to another
9 distributor within New Mexico during the reporting period and
10 the name and address of each person to whom each quantity was
11 distributed or shipped;

12 (5) the quantity of New Mexico stamped
13 packages of cigarettes that were distributed or shipped to
14 another facility of the same distributor within New Mexico
15 during the reporting period and the address of that facility;

16 (6) the quantity of stamped cigarette packages
17 that were distributed or shipped within New Mexico to [~~an~~
18 ~~Indian nation, tribe or pueblo or to a person located on the~~
19 ~~land of an Indian nation, tribe or pueblo]~~ a tribe or tribal
20 member or to instrumentalities of the federal government during
21 the reporting period and the name and address of each person,
22 entity or instrumentality to whom each quantity was distributed
23 or shipped;

24 (7) an inventory of stamped and unstamped
25 packages of cigarettes held for sale or distribution within New

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1 Mexico at the end of the reporting period;

2 (8) an inventory of stamped and unstamped
3 packages of cigarettes for sale or distribution outside of New
4 Mexico at the beginning of the reporting period;

5 (9) the quantity of packages of cigarettes
6 held for sale or distribution outside of New Mexico that were
7 received from another person during the reporting period and
8 the name and address of each person from whom each quantity was
9 received;

10 (10) the quantity of packages of cigarettes
11 that were distributed or shipped outside New Mexico during the
12 reporting period;

13 (11) an inventory of packages of cigarettes
14 held for sale or distribution outside of New Mexico at the end
15 of the reporting period;

16 (12) the number of each type of stamp on hand
17 at the beginning of the reporting period;

18 (13) the number of each type of stamp
19 purchased or received during the reporting period;

20 (14) the number of each type of stamp applied
21 during the reporting period; and

22 (15) the number of each type of stamp on hand
23 at the end of the reporting period.

24 B. A manufacturer shall submit periodic reports in
25 the manner and on the form prescribed by the department. The

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1 information in the report shall be itemized to clearly disclose
2 cigarette brands and quantities. The reports shall be provided
3 separately with respect to each of the facilities operated by
4 the manufacturer. A report shall contain the quantity of
5 packages of cigarettes that were distributed or shipped:

6 (1) to a manufacturer, distributor or retailer
7 within New Mexico during the reporting period and the name and
8 address of each person to whom each quantity was distributed or
9 shipped;

10 (2) to another facility within New Mexico of
11 the same manufacturer during the reporting period and the
12 address of the facility; and

13 (3) within New Mexico to ~~[an Indian nation,~~
14 ~~tribe or pueblo or to a person located on the land of an Indian~~
15 ~~nation, tribe or pueblo]~~ a tribe or tribal member or to
16 instrumentalities of the federal government during the
17 reporting period and the name and address of each person,
18 entity or instrumentality to whom each quantity was distributed
19 or shipped.

20 C. The department may require additional
21 information to be submitted. The department shall establish
22 the reporting period, which shall be no longer than three
23 calendar months and no shorter than one calendar month."

24 Section 13. Section 7-12-19 NMSA 1978 (being Laws 2006,
25 Chapter 91, Section 15) is amended to read:

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1 "7-12-19. INTERGOVERNMENTAL AGREEMENTS--NO WAIVER OF
2 SOVEREIGN IMMUNITY.--

3 A. The department may enter into an
4 intergovernmental agreement with a tribe to:

5 (1) enforce, administer or otherwise implement
6 the provisions of the Cigarette Tax Act;

7 (2) increase the ability of the department to
8 account for packages of cigarettes imported into, sold or
9 transferred within and exported from the state; and

10 (3) provide for cooperative tax collection or
11 tax administration of the cigarette tax.

12 B. Nothing in the Cigarette Tax Act shall be
13 construed to waive or restrict the sovereign immunity of a
14 tribe or the state.

15 [~~C. As used in this section, "tribe" means an
16 Indian nation, tribe or pueblo located wholly or partially in
17 New Mexico.]~~"]

18 Section 14. Section 7-1-6.11 NMSA 1978 (being Laws 1983,
19 Chapter 211, Section 16, as amended) is repealed and a new
20 Section 7-1-6.11 NMSA 1978 is enacted to read:

21 "7-1-6.11. [NEW MATERIAL] DISTRIBUTIONS OF CIGARETTE
22 TAXES.--

23 A. A distribution pursuant to Section 7-1-6.1 NMSA
24 1978 shall be made to the county and municipality recreational
25 fund in an amount equal to one and thirty-five hundredths

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1 percent of the net receipts, exclusive of penalties and
2 interest, attributable to the cigarette tax.

3 B. A distribution pursuant to Section 7-1-6.1 NMSA
4 1978 shall be made to the county and municipal cigarette tax
5 fund in an amount equal to two and sixty-nine hundredths
6 percent of the net receipts, exclusive of penalties and
7 interest, attributable to the cigarette tax.

8 C. A distribution pursuant to Section 7-1-6.1 NMSA
9 1978 shall be made to the cancer research and treatment center
10 at the university of New Mexico health sciences center in an
11 amount equal to one and thirty-five hundredths percent of the
12 net receipts, exclusive of penalties and interest, attributable
13 to the cigarette tax.

14 D. A distribution pursuant to Section 7-1-6.1 NMSA
15 1978 shall be made to the New Mexico finance authority in an
16 amount equal to two and two-hundredths percent of the net
17 receipts, exclusive of penalties and interest, attributable to
18 the cigarette tax.

19 E. A distribution pursuant to Section 7-1-6.1 NMSA
20 1978 in an amount equal to fourteen and thirty-seven hundredths
21 percent of the net receipts, exclusive of penalties and
22 interest, attributable to the cigarette tax, shall be made, on
23 behalf of and for the benefit of the university of New Mexico
24 health sciences center, to the New Mexico finance authority.

25 F. A distribution pursuant to Section 7-1-6.1 NMSA

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1 1978 in an amount equal to six and five-hundredths percent of
 2 the net receipts, exclusive of penalties and interest,
 3 attributable to the cigarette tax shall be made to the New
 4 Mexico finance authority for land acquisition and the planning,
 5 designing, construction and equipping of department of health
 6 facilities or improvements to such facilities.

7 G. A distribution pursuant to Section 7-1-6.1 NMSA
 8 1978 in an amount equal to fifteen and seventy-nine hundredths
 9 percent of the net receipts, exclusive of penalties and
 10 interest, attributable to the cigarette tax shall be made to
 11 the New Mexico finance authority for deposit in the credit
 12 enhancement account created in the authority.

13 H. A distribution pursuant to Section 7-1-6.1 NMSA
 14 1978 in an amount equal to one percent of the net receipts,
 15 exclusive of penalties and interest, attributable to the
 16 cigarette tax shall be made, on behalf of and for the benefit
 17 of the rural county cancer treatment fund, to the New Mexico
 18 finance authority."

19 Section 15. Section 7-12-2 NMSA 1978 (being Laws 1971,
 20 Chapter 77, Section 2, as amended) is repealed and a new
 21 Section 7-12-2 NMSA 1978 is enacted to read:

22 "7-12-2. [NEW MATERIAL] DEFINITIONS.--As used in the
 23 Cigarette Tax Act:

24 A. "cigarette" means:

25 (1) any roll of tobacco or any substitute for

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1 tobacco wrapped in paper or in any substance not containing
2 tobacco;

3 (2) any roll of tobacco that is wrapped in any
4 substance containing tobacco, other than one hundred percent
5 natural leaf tobacco, which, because of its appearance, the
6 type of tobacco used in the filler, its packaging and labeling,
7 or its marketing and advertising, is likely to be offered to,
8 or purchased by, consumers as a cigarette, as described in
9 Paragraph (1) of this subsection;

10 (3) bidis and kreteks; or

11 (4) any other roll of tobacco that is defined
12 as a "cigarette" in Subsection D of Section 6-4-12 NMSA 1978;

13 B. "contraband cigarettes" means cigarette packages
14 with counterfeit stamps, counterfeit cigarettes, cigarettes
15 that have false or fraudulent manufacturing labels, cigarettes
16 not sold in packages of five, ten, twenty or twenty-five,
17 cigarette packages without the tax or tax-exempt stamps
18 required by the Cigarette Tax Act and cigarettes produced by a
19 manufacturer or in a brand family not included in the
20 directory;

21 C. "department" means the taxation and revenue
22 department, the secretary of taxation and revenue or any
23 employee of the department exercising authority lawfully
24 delegated to that employee;

25 D. "directory" means a listing of tobacco product

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1 manufacturers and brand families that is developed, maintained
2 and published by the attorney general under the Tobacco Escrow
3 Fund Act;

4 E. "distributor" means a person licensed pursuant
5 to the Cigarette Tax Act to sell or distribute cigarettes in
6 New Mexico. "Distributor" does not include:

7 (1) a retailer;

8 (2) a cigarette manufacturer, export warehouse
9 proprietor or importer with a valid permit pursuant to 26
10 U.S.C. 5713, if that person sells cigarettes in New Mexico only
11 to distributors that hold valid licenses under the laws of a
12 state or sells to an export warehouse proprietor or to another
13 manufacturer; or

14 (3) a common or contract carrier transporting
15 cigarettes pursuant to a bill of lading or freight bill, or a
16 person who ships cigarettes through the state by a common or
17 contract carrier pursuant to a bill of lading or freight bill;

18 F. "license" means a license granted pursuant to
19 the Cigarette Tax Act that authorizes the holder to conduct
20 business as a manufacturer or distributor of cigarettes;

21 G. "manufacturer" means a person that manufactures,
22 fabricates, assembles, processes or labels a cigarette or that
23 imports from outside the United States, directly or indirectly,
24 a finished cigarette for sale or distribution in the United
25 States;

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1 H. "master settlement agreement" means the
2 settlement agreement and related documents entered into on
3 November 23, 1998 by the state and leading United States
4 tobacco product manufacturers;

5 I. "package" means an individual pack, box or other
6 container; "package" does not include a container that itself
7 contains other containers, such as a carton of cigarettes;

8 J. "retailer" means a person, whether located
9 within or outside of New Mexico, that sells cigarettes at
10 retail to a consumer in New Mexico and the sale is not for
11 resale;

12 K. "stamp" means an adhesive label issued and
13 authorized by the department to be affixed to cigarette
14 packages for excise tax purposes and upon which is printed a
15 serial number and the words "State of New Mexico" and "tobacco
16 tax";

17 L. "tax stamp" means a stamp that has a specific
18 cigarette tax value pursuant to the Cigarette Tax Act; and

19 M. "tax-exempt stamp" means a stamp that indicates
20 a tax-exempt status pursuant to the Cigarette Tax Act."

21 Section 16. Section 7-12-3 NMSA 1978 (being Laws 1971,
22 Chapter 77, Section 3, as amended) is repealed a new Section
23 7-12-3 NMSA 1978 is enacted to read:

24 "7-12-3. [NEW MATERIAL] EXCISE TAX ON CIGARETTES--
25 RATES.--

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1 A. For the privilege of selling, giving or
2 consuming cigarettes in New Mexico, there is levied an excise
3 tax at the following rates for each cigarette sold, given or
4 consumed in this state:

5 (1) four and fifty-five hundredths cents
6 (\$.0455) if the cigarettes are packaged in lots of twenty or
7 twenty-five;

8 (2) nine and ten-hundredths cents (\$.091) if
9 the cigarettes are packaged in lots of ten; or

10 (3) eighteen and twenty-hundredths cents
11 (\$.182) if the cigarettes are packaged in lots of five.

12 B. The tax imposed by this section shall be
13 referred to as the "cigarette tax".

14 Section 17. Section 7-12-3.1 NMSA 1978 (being Laws 1986,
15 Chapter 13, Section 3, as amended) is repealed and a new
16 Section 7-12-3.1 NMSA 1978 is enacted to read:

17 "7-12-3.1. [NEW MATERIAL] CIGARETTE INVENTORY TAX--
18 IMPOSITION OF TAX--DATE PAYMENT OF TAX DUE.--

19 A. A tax that may be identified as the "cigarette
20 inventory tax" is imposed on a distributor that has in its
21 possession tax-exempt stamps or tax stamps, whether or not
22 affixed to packages of cigarettes, on the date on which an
23 increase in the cigarette tax imposed by Section 7-12-3 NMSA
24 1978 is effective.

25 B. The cigarette inventory tax due from the
26 .182314.2

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1 distributor is calculated by multiplying the number of tax
2 stamps in the distributor's possession by the increase in the
3 excise tax. Tax-exempt stamps are not included in the
4 calculation to determine the amount of cigarette inventory tax
5 to be paid by a distributor.

6 C. The cigarette inventory tax is to be paid to the
7 department on or before the twenty-fifth day of the month
8 following the month in which the increase in the cigarette tax
9 is effective."

10 Section 18. Section 7-12-3.2 NMSA 1978 (being Laws 1986,
11 Chapter 13, Section 4, as amended) is repealed and a new
12 Section 7-12-3.2 NMSA 1978 is enacted to read:

13 "7-12-3.2. [NEW MATERIAL] CIGARETTE INVENTORIES.--

14 A. On any date on which the cigarette tax imposed
15 by Section 7-12-3 NMSA 1978 is increased, each distributor
16 shall take inventory of tax-exempt stamps and tax stamps on
17 hand, including stamps affixed to packages of cigarettes.

18 B. Each distributor shall report the total number
19 of tax-exempt stamps and tax stamps in inventory on the date on
20 which the cigarette tax increases and pay the cigarette
21 inventory tax due."

22 Section 19. Section 7-12-4 NMSA 1978 (being Laws 1971,
23 Chapter 77, Section 4, as amended) is repealed and a new
24 Section 7-12-4 NMSA 1978 is enacted to read:

25 "7-12-4. [NEW MATERIAL] EXEMPTION.--

1 A. Exempted from the cigarette tax are sales of
2 cigarettes:

3 (1) to the United States or any agency or
4 instrumentality thereof or the state of New Mexico or any
5 political subdivision thereof;

6 (2) to the governing body, or to any enrolled
7 tribal member licensed by the governing body, of any Indian
8 nation, tribe or pueblo for use or sale on that reservation or
9 pueblo grant; and

10 (3) sales that the state is prohibited from
11 taxing by a provision of the United States constitution or the
12 constitution of the state of New Mexico.

13 B. As used in this section, the term "agency or
14 instrumentality" does not include persons who are agents or
15 instrumentalities of the United States for a particular purpose
16 or only when acting in a particular capacity or corporate
17 agencies or instrumentalities."

18 Section 20. Section 7-12-5 NMSA 1978 (being Laws 1971,
19 Chapter 77, Section 5, as amended) is repealed and a new
20 Section 7-12-5 NMSA 1978 is enacted to read:

21 "7-12-5. [NEW MATERIAL] AFFIXING STAMPS.--

22 A. Except as provided in Section 7-12-6 NMSA 1978,
23 all cigarettes shall be placed in packages or containers to
24 which a stamp shall be affixed. Only a distributor with a
25 valid license issued pursuant to the Cigarette Tax Act may

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1 purchase or obtain unaffixed tax-exempt stamps or tax stamps.
2 A distributor shall not sell or provide unaffixed stamps to
3 another distributor, manufacturer, export warehouse proprietor
4 or importer with a valid permit pursuant to 26 U.S.C. 5713 or
5 any other person.

6 B. Stamps shall be affixed by the distributor to
7 each package of cigarettes to be sold or distributed in New
8 Mexico within thirty days of receipt of those packages.

9 C. A distributor shall apply stamps only to
10 packages of cigarettes that the distributor has received
11 directly from another distributor or from a manufacturer or
12 importer of cigarettes that possesses a valid and current
13 permit pursuant to 26 U.S.C. 5713.

14 D. A distributor shall not affix a stamp to a
15 package of cigarettes of a manufacturer or a brand family that
16 is not included in the directory or sell, offer or possess for
17 sale cigarettes of a manufacturer or brand family that is not
18 included in the directory.

19 E. Packages shall contain cigarettes in lots of
20 five, ten, twenty or twenty-five.

21 F. Unless the requirements of this section are
22 waived pursuant to Section 7-12-6 NMSA 1978, a tax stamp shall
23 be affixed to each package of cigarettes subject to the
24 cigarette tax and a tax-exempt stamp shall be affixed to each
25 package of cigarettes not subject to the cigarette tax pursuant

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1 to Section 7-12-4 NMSA 1978.

2 G. A tax-exempt stamp is not an excise tax stamp
3 for purposes of determining units sold pursuant to Section
4 6-4-12 NMSA 1978.

5 H. Stamps shall be affixed inside the boundaries of
6 New Mexico, unless the department has granted a license
7 allowing a person to affix stamps outside New Mexico."

8 Section 21. Section 7-12-7 NMSA 1978 (being Laws 1971,
9 Chapter 77, Section 7, as amended) is repealed and a new
10 Section 7-12-7 NMSA 1978 is enacted to read:

11 "7-12-7. [NEW MATERIAL] SALE OF STAMPS--PRICES.--

12 A. Only the department shall sell stamps. Stamps
13 may be sold by the department only to a distributor.

14 B. Stamps shall display a serial number. Stamps
15 bearing the same serial number shall not be sold to more than
16 one distributor. The department shall keep records of the
17 serial numbers of the stamps provided to each distributor.

18 C. A stamp shall be affixed to a package of
19 cigarettes in such a manner as to clearly display the serial
20 number at the point of sale.

21 D. Tax stamps shall be sold at their face value
22 with the following discounts:

23 (1) one percent less than the face value of
24 the first thirty thousand dollars (\$30,000) of stamps purchased
25 in one calendar month;

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1 (2) eight-tenths percent less than the face
2 value of the second thirty thousand dollars (\$30,000) of stamps
3 purchased in one calendar month; and

4 (3) one-half percent less than the face value
5 of stamps purchased in excess of sixty thousand dollars
6 (\$60,000) in one calendar month.

7 E. If the face value of tax stamps sold in a single
8 sale is less than one thousand dollars (\$1,000), the discount
9 provided for in this section shall not be allowed.

10 F. Payment for tax stamps shall be made on or
11 before the twenty-fifth day of the month following the month in
12 which the sale of stamps by the department is made.

13 G. Tax-exempt stamps shall be provided only to
14 distributors and shall be free of charge; provided that the
15 distributor is in full compliance with the reporting
16 requirements of the Cigarette Tax Act and rules adopted
17 pursuant to that act."

18 Section 22. Section 7-12-9.2 NMSA 1978 (being Laws 2006,
19 Chapter 91, Section 8, as amended) is repealed and a new
20 Section 7-12-9.2 NMSA 1978 is enacted to read:

21 "7-12-9.2. [NEW MATERIAL] DISTRIBUTOR'S LICENSE.--

22 A. A person shall not distribute stamped packages
23 of cigarettes for resale or sell stamped packages of cigarettes
24 at wholesale without first obtaining a distributor's license
25 from the department.

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1 B. A person licensed to distribute cigarettes is
2 authorized to:

3 (1) receive unstamped packages of cigarettes
4 from a manufacturer or a distributor;

5 (2) purchase tax stamps and receive
6 tax-exempt stamps from the department;

7 (3) affix tax stamps or tax-exempt stamps to
8 unstamped packages of cigarettes;

9 (4) sell stamped packages of cigarettes to a
10 retailer for resale or to a distributor; and

11 (5) sell unstamped packages of cigarettes to a
12 person licensed to distribute cigarettes outside of New Mexico
13 or to a distributor."

14 Section 23. Section 7-12-17 NMSA 1978 (being Laws 1971,
15 Chapter 77, Section 14, as amended) is repealed and a new
16 Section 7-12-17 NMSA 1978 is enacted to read:

17 "7-12-17. [NEW MATERIAL] REPORTING REQUIREMENTS--
18 PENALTY.--

19 A. Each person who sells in New Mexico cigarettes
20 manufactured by that person or who receives on consignment or
21 buys cigarettes either directly from the manufacturer or from
22 any out-of-state person for resale in New Mexico shall report
23 to the department by the twenty-fifth day of each month that
24 person's sales of cigarettes during the preceding month in each
25 municipality and within that portion of each county outside of

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1 the municipalities located in that county. The department
2 shall then advise the state treasurer of the proportion of the
3 total sales of cigarettes for the month within each
4 municipality and within that portion of each county outside of
5 municipalities. The reports of such persons shall, upon
6 receipt by the department, become public records.

7 B. Any person who sells in New Mexico cigarettes
8 manufactured by that person or who receives on consignment or
9 buys cigarettes for resale in New Mexico who willfully fails to
10 render accurately the reports required by this section and any
11 municipal or county officer who approves any expenditure or
12 expends funds distributed from the county and municipality
13 recreational fund for any purposes other than permitted by
14 Section 7-12-15 NMSA 1978 is guilty of a petty misdemeanor.

15 C. Any tobacco product manufacturer, stamping agent
16 or importer of cigarettes, or any officer, employee or agent of
17 any such entity, who knowingly makes a materially false
18 statement in any record required to be kept by the Cigarette
19 Tax Act, or in any report or return required to be filed with
20 the department by the Cigarette Tax Act is guilty of a fourth
21 degree felony."

22 Section 24. Section 7-12-18 NMSA 1978 (being Laws 2006,
23 Chapter 91, Section 14, as amended) is repealed and a new
24 Section 7-12-18 NMSA 1978 is enacted to read:

25 "7-12-18. [NEW MATERIAL] REPORTS.--

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1 A. A distributor shall submit periodic reports to
2 the department, in the manner and on the form prescribed by the
3 department. A distributor shall submit a separate report for
4 each of its facilities. The information in the report shall be
5 itemized and shall clearly disclose cigarette brands,
6 quantities and the type of stamp applied to the packages of
7 cigarettes. A report shall include:

8 (1) an inventory of stamped and unstamped
9 packages of cigarettes held for sale or distribution within New
10 Mexico at the beginning of the reporting period;

11 (2) the quantity of stamped packages of
12 cigarettes held for sale or distribution within New Mexico that
13 were received from another person during the reporting period
14 and the name and address of each person from whom each quantity
15 was received;

16 (3) the quantity of New Mexico stamped
17 packages of cigarettes that were distributed or shipped to
18 another distributor or retailer within New Mexico during the
19 reporting period and the name and address of each person to
20 whom each quantity was distributed or shipped;

21 (4) the quantity of unstamped packages of
22 cigarettes that were distributed or shipped to another
23 distributor within New Mexico during the reporting period and
24 the name and address of each person to whom each quantity was
25 distributed or shipped;

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1 (5) the quantity of New Mexico stamped
2 packages of cigarettes that were distributed or shipped to
3 another facility of the same distributor within New Mexico
4 during the reporting period and the address of that facility;

5 (6) the quantity of stamped cigarette packages
6 that were distributed or shipped within New Mexico to an Indian
7 nation, tribe or pueblo or to a person located on the land of
8 an Indian nation, tribe or pueblo or to instrumentalities of
9 the federal government during the reporting period and the name
10 and address of each person, entity or instrumentality to whom
11 each quantity was distributed or shipped;

12 (7) an inventory of stamped and unstamped
13 packages of cigarettes held for sale or distribution within New
14 Mexico at the end of the reporting period;

15 (8) an inventory of stamped and unstamped
16 packages of cigarettes for sale or distribution outside of New
17 Mexico at the beginning of the reporting period;

18 (9) the quantity of packages of cigarettes
19 held for sale or distribution outside of New Mexico that were
20 received from another person during the reporting period and
21 the name and address of each person from whom each quantity was
22 received;

23 (10) the quantity of packages of cigarettes
24 that were distributed or shipped outside New Mexico during the
25 reporting period;

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1 (11) an inventory of packages of cigarettes
2 held for sale or distribution outside of New Mexico at the end
3 of the reporting period;

4 (12) the number of each type of stamp on hand
5 at the beginning of the reporting period;

6 (13) the number of each type of stamp
7 purchased or received during the reporting period;

8 (14) the number of each type of stamp applied
9 during the reporting period; and

10 (15) the number of each type of stamp on hand
11 at the end of the reporting period.

12 B. A manufacturer shall submit periodic reports in
13 the manner and on the form prescribed by the department. The
14 information in the report shall be itemized to clearly disclose
15 cigarette brands and quantities. The reports shall be provided
16 separately with respect to each of the facilities operated by
17 the manufacturer. A report shall contain the quantity of
18 packages of cigarettes that were distributed or shipped:

19 (1) to a manufacturer, distributor or retailer
20 within New Mexico during the reporting period and the name and
21 address of each person to whom each quantity was distributed or
22 shipped;

23 (2) to another facility within New Mexico of
24 the same manufacturer during the reporting period and the
25 address of the facility; and

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1 (3) within New Mexico to an Indian nation,
2 tribe or pueblo or to a person located on the land of an Indian
3 nation, tribe or pueblo or to instrumentalities of the federal
4 government during the reporting period and the name and address
5 of each person, entity or instrumentality to whom each quantity
6 was distributed or shipped.

7 C. The department may require additional
8 information to be submitted. The department shall establish
9 the reporting period, which shall be no longer than three
10 calendar months and no shorter than one calendar month."

11 Section 25. Section 7-12-19 NMSA 1978 (being Laws 2006,
12 Chapter 91, Section 15) is repealed and a new Section 7-12-19
13 NMSA 1978 is enacted to read:

14 "7-12-19. [NEW MATERIAL] INTERGOVERNMENTAL AGREEMENTS--
15 NO WAIVER OF SOVEREIGN IMMUNITY.--

16 A. The department may enter into an
17 intergovernmental agreement with a tribe to:

18 (1) enforce, administer or otherwise implement
19 the provisions of the Cigarette Tax Act;

20 (2) increase the ability of the department to
21 account for packages of cigarettes imported into, sold or
22 transferred within and exported from the state; and

23 (3) provide for cooperative tax collection or
24 tax administration of the cigarette tax.

25 B. Nothing in the Cigarette Tax Act shall be

1 construed to waive or restrict the sovereign immunity of a
2 tribe or the state.

3 C. As used in this section, "tribe" means an Indian
4 nation, tribe or pueblo located wholly or partially in New
5 Mexico."

6 Section 26. DELAYED REPEAL.--Section 7 of this act is
7 repealed effective July 1, 2014.

8 Section 27. APPLICABILITY.--

9 A. The distributions pursuant to the provisions of
10 Section 1 of this act apply to receipts from the cigarette tax
11 that are attributable to sales that occur on or after July 1,
12 2010.

13 B. The distributions pursuant to the provisions of
14 Section 14 of this act apply to receipts from the cigarette tax
15 that are attributable to sales that occur on or after July 1,
16 2014.

17 Section 28. EFFECTIVE DATE.--

18 A. The effective date of the provisions of Sections
19 1 through 13 of this act is July 1, 2010.

20 B. The effective date of the provisions of Sections
21 14 through 25 of this act is July 1, 2014.